

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JESUS O. TRUJILLO,

Plaintiff(s),

Case No. 2:15-CV-145 JCM (CWH)

ORDER

v.

MESQUITE GAMING LLC,

Defendant(s).

Presently before the court is defendant Mesquite Gaming's motion to dismiss for failure of service of process. (Doc. # 6). Plaintiff's response was due by July 13, 2015. Plaintiff has not filed a response or sought an extension from the court.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Where a complaint pleads facts that are 'merely consistent' with a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (citing *Bell Atlantic*, 550 U.S. at 557). However, where there are well pled factual allegations, the court should assume their veracity and determine if they give rise to relief. *Id.* at 1950.

Pursuant to Local Rule 7-2, an opposing party must file points and authorities in response to a motion and failure to file a timely response constitutes the party's consent to the granting of the motion and is proper grounds for dismissal. *See* LR IB 7-2(d); *United States v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979). However, prior to dismissal, the district court is required to weigh several factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring

1 disposition of cases of their merits; and (5) the availability of less drastic sanctions.” *Ghazali v.*
2 *Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (citing *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.
3 1986)).

4 Federal Rule of Civil Procedure 4(m) provides: “If a defendant is not served within 120
5 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—
6 must dismiss the action without prejudice.”


7 Plaintiff filed his complaint on January 23, 2015. (Doc. # 1). On June 15, 2015, the clerk
8 of the court provided notice to plaintiff that the action would be dismissed if plaintiff did not file
9 proof of service of process by July 15, 2015. (Doc. # 5). To date, plaintiff has failed to file proof
10 of service with the court as to defendant Mesquite Gaming.

11 In light of plaintiff’s failure to respond and weighing the factors identified in *Ghazali*, the
12 court finds dismissal of plaintiff’s complaint against the moving defendants appropriate.

13 Accordingly,

14 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Mesquite
15 Gaming’s motion to dismiss for failure of service of process (doc. # 6) be, and the same hereby is,
16 GRANTED. The case is dismissed without prejudice. The clerk is ordered to close the case.

17 DATED July 20, 2015.

18 
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28